THE HON'BLE SRI. JUSTICE GODA RAGHURAM

W.P.No. 5884 of 2006

28-03-2006

Between:-

Dampanaboina Raghu

Petitioner

And

The Commissioner of Endowments, Boggulakunta, Tilak Road, Hyderabad and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 5884 of 2006

Oral order:

Heard the learned counsel for the petitioner and the learned Government Pleader for Endowments for the respondents.

The petitioner seeks a declaration that the action of the 1st respondent rejecting his bid, the highest, for granting license for collection of human hair in the 2nd respondent temple is illegal in particular for failing to record reasons as mandated in Rule 3 of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immoveable Properties and other rights (other than Agricultural lands) Lease and Licenses Rules, 2003 (for short 'the Rules') framed vide G.O.Ms.No. 866 Revenue (ENDTS.I) Department dated 08-08-2003 and additionally for the reason that the respondents failed to communicate the order of rejection passed by the 1st respondent to the petitioner. The petitioner also seeks a consequential direction to the respondents to grant licence to him.

The 2nd respondent-temple notified conduct of public auction for granting of license rights and leasehold rights for 12 items for the

period 2006-2007. The auction was scheduled on 16-02-2006. The petitioner along with others participated in the public auction conducted on 16-02-2006 for the first item scheduled for auction viz., grant of license for collection of human hair in the temple. The petitioner having bid an amount of Rs.2,60,000-00 towards the monthly license fee as against the previous year's accepted bid of Rs.1,17,000-00 per month, emerged as the highest bidder. He paid Rs.5,00,000-00 towards earnest money deposit; Rs.4,00,000-00 towards security and Rs.7,80,000-00 towards the three months' deposit. The license period is to commence from 01-04-2006 and is to enure up to 31-03-2007.

It is the admitted position that grant of license/lease is governed by the Rules. The Rules have been issued in purported exercise of powers conferred by Section 82 read with Section 153 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No. 30 of 1987) (for short 'the Act'). To the extent relevant and material for the purposes of this lis, Rule 12 mandates that all leases or licenses shall immediately after auction is conducted, be reported to the competent authority, who may either confirm, or for the reasons to be recorded in writing, reject the leases or licenses. Rule 12(2) of the Rules and the table appended thereunder, enumerate the competent authorities to confirm or reject the lease or license.

It is undisputed that in respect of the lease for the first item, for which the petitioner had bid, the 1st respondent—the Commissioner of Endowments, is the competent authority. Rule 12(3) of the Rules ordains that no lease or license shall be valid unless and until it is approved by the Competent Authority. Rule 14 (1) of the Rules enacts that all lease deeds or deeds of licenses shall be obtained in writing and shall be registered. Sub-rule (2) of Rule 14 enacts that no person shall be allowed to enforce his rights under the lease or license until he has executed the lease deed.

After the conduct of the auction on 16-02-2006 at which the petitioner

emerged as the highest bidder, the 2nd respondent on 17-02-2006, forwarded the results of the auction including the bid of the petitioner, which was the highest, to the 1st respondent for his confirmation, as required under Rule 12. Nothing was communicated to the petitioner by the 1st respondent. However, the 2nd respondent, by a communication dated 19-03-2006 informed the petitioner that though the petitioner emerged as the highest bidder at the public auction conducted on 16-02-2006, the 1st respondent had vetoed the auction held on 16-02-2006 and directed the 2nd respondent to conduct a fresh public auction. The 2nd respondent stated that public auction would be conducted on 27-03-2006 in the 2nd respondent's office and therefore the petitioner should take back the earnest money deposit and participate in the public auction.

None of the respondents have filed counter affidavits, but the learned Government Pleader for Endowments obtained instructions from the respondents and has made elaborate submissions.

The relevant file has also been produced for the perusal of this court. From a perusal of the file, it is seen that on 17-02-2006 the 2nd respondent had sent up the proposals on the basis of the auction held on 16-02-2006, to the 1st respondent. The 1st respondent thereupon passed an order dated 18-03-2006 vetoing eight (8) items {for which public auction was conducted on 16-02-2006 in respect of the 2nd respondent-temple} and directed the 2nd respondent to conduct fresh auction and ensure that "more amount" is secured and send up proposals for his approval.

The 1st respondent in the proceedings dated 18-03-2006 did not record any reasons why the bid of the petitioner at Rs.2,60,000-00 was not competitive or was perceived to be an inadequate bid {for collection of the human hair in the 2nd respondent temple}. Rule 12 of the Rules vests a power and a concomitant obligation, a specific obligation on the 1st respondent as the competent authority, to reject

a lease or license for reasons to be recorded in writing. Except what could be inferred from the last paragraph of the 1st respondent's order dated 18-03-2006, that more amount could be secured, the 1st respondent failed to record reasons as to why the bids already received were found to be inadequate or non-responsive. The 1st respondent thus failed to comply with the mandate of the statutory Rules in recording reasons for canceling the auction and directing conduct of fresh auction.

The invitation to bid is not a ritual or empty formality to be eschewed at the drop of a hat. In certain situations frequent cancellation of bids might result in total apathy or even lead to formation of cartels and would eventually defeat the purposes for which power and discretion is conferred on the Commissioner for Endowments. The power conferred on the Commissioner under Rule 12 is a public power and invites public accountability. The statute specifically requires recording of reasons for cancellation of a lease or license. Even otherwise, on established principles of administrative law, reasons are required to be recorded by any authority even for an administrative decision having adverse legal consequences either on the rights or even the legitimate expectations of a citizen.

By the earlier invitation to public auction notified by the 2nd respondent, citizens are invited to participate in the bids. In fact, the petitioner has deposited Rs.5,00,000-00 towards earnest money deposit; Rs.4,00,000-00 towards security and Rs.7,80,000-00 towards three months' deposit pursuant to his highest bid. To that extent he has altered his situation to his financial detriment. No doubt, a power and concomitant discretion is conferred on the 1st respondent to reject the bid, if it is so required in public interest or in the interests of the 2nd respondent-Temple. But having regard to the fact that the bids were invited and people have put themselves at a disadvantage by responding, bidding and depositing large amounts, fair procedure mandated by administrative law principles require that the 1st respondent should not only record reasons, but communicate

the decision along with reasons to the highest bidder while canceling the lease. If this is done, the bidders or at least the highest bidder would know the reasons why the earlier auction process was cancelled and thus arrange his affairs and his future strategies accordingly. Such fair procedure also ensures transparency in conduct of public authorities and would act as a check on possible abuse of the statutory powers conferred on the Commissioner of Endowments. Such practice conduces a healthy and transparent administrative accountability to the Statutory regime. The clandestine process adopted by the 1st respondent in passing order and communicating it selectively only to the 2nd respondent without communicating the decision to the petitioner, who was indisputably the highest bidder, has subverted not only the Statutory mandate, but also the well established principles of administrative law which ought to have governed the decision making process of the 1st respondent.

The petitioner has therefore suffered a corollary legal injury by the illegal action of the 1st respondent. As the 1st respondent's order dated 18-03-2006 cancelling the lease contains no reasons, which record why the entire auction process was cancelled, the said order does not merit sustenance or acceptance.

For the aforementioned reasons, the order of the 1st respondent dated 18-03-2006 is quashed. The 1st respondent is directed to consider the results of the auction conducted on 16-03-2006 which were forwarded by the 2nd respondent by his communication dated 17-03-2006, afresh and pass orders recording adequate, rational and clear reasons why the 1st respondent has come to the conclusion that the bids received and consequent on the auction held on 16-02-2006 {for the eight (8) items put up for auction in respect of the 2nd respondent's-temple}, are not responsive.

As the order of the 1st respondent dated 18-03-2006 is arbitrary, illegal and contrary to the Rules, the writ petition is allowed with costs

in an amount of Rs.1,500-00 (Rupees One thousand five hundred only) payable by the 1st respondent to the petitioner.

The writ petition is allowed as above with costs.

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GODA RAGHURAM, J

Dated:28-03-2006

Pvks/*

Nb:- A copy of this order be communicated to the

Chief Secretary to the Government of Andhra Pradesh, Hyderabad for information and appropriate consideration.

B/o pvks/*